11/4/86 R5650-2

JAPAN · ECONOMIC · INSTITUTE

JEI REPORT

NO. 40A October 31, 1986

JAPANESE DEFENSE: UNDERPINNINGS AND CONSTRAINTS

Summary

The essentials of Japan's defense policies are widely known in both Japan and the United States. Even the man on the street is aware that Japan restricts its total annual defense budget to an amount roughly equal to one percent of its gross national product. After that, however, distinctions become blurred. What is often described as a "constitutional" restriction on defense policies, for example, is more often a policy decision established by the cabinet that has never been legislated in any form and theoretically is subject to change. The objective of this brief is to help provide some of the distinctions between "policies" and more fundamental restrictions and how they merge to form the underlying foundation for present-day policies.

The Framework of Japan's Defense Policies

No aspect of Japan's defense policies is better known than its "peace constitution." The circumstances surrounding the adoption of Article IX are still in dispute by scholars and policymakers in both Japan and the United States. While the debate over whether the renunciation of war was imposed on Japan by Occupation authorities or willingly adopted by the Japanese government has some bearing on overall defense policy discussions, it is sufficient for the purposes of this analysis simply to outline its role in the overall formation of present-day policies. Article IX is brief and concise:

> Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as a means of settling international disputes.
>
> In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

It is important to note that these two paragraphs are the only bona fide constitutional restrictions on Japan's defense. The key to present-day defense policies lies in understanding the government's interpretations of Article IX in light of domestic public support and the international climate. Very few of the policies constructed on the foundation of Article IX have been legislated since the 1954 laws establishing the Self-Defense Forces and the Japan Defense Agency were passed; rather, they result from a series of cabinet decisions over the last 30 years.

To date, government policies -- including the establishment of the Self-Defense Forces and cooperation with the United States -- have survived a series of legal challenges. A 1955 case resulted in a Supreme Court ruling four years later that Article IX did not exclude the right to self-defense; the right to take "appropriate measures" to assure self-defense (that is, establishing a military force to protect the country); or the right of the government to enter into security arrangements with other countries. (That interpretation was also alluded to by the peace and security treaties between the United States and Japan. Although the 1960 Mutual Security Treaty, which replaced the 1951 Security Treaty, omitted the references to self-defense rights, this principle has remained fundamental to defense policymaking.) District and Supreme Court decisions in 1976 and 1977 reaffirmed and in some respects expanded on these principles.

Japanese cabinets in subsequent decades have implemented a variety of supporting policies that have been deemed to be consistent with the spirit and letter of Article IX, primarily in the form of restrictions on the SDF and the Japan Defense Agency. More often than not, Japanese defense policies have been articulated in terms of what cannot be done. Included among these doctrines are the following:

- No overseas troop deployments - A Diet upper house resolution in 1954 helped establish this principle, as did provisions in the Self-Defense Forces law. Although there is debate over the constitutionality and/or desirability of deploying SDF forces for United Nations peacekeeping operations, the law establishing the SDF was once interpreted as prohibiting such operations. The measure was amended in 1981 to prohibit deployment to countries where the SDF could be used as a "measure of force," paving the way for policy to take over where legal restrictions once stood. Although it may now be legally permissible to send SDF personnel abroad as part of a U.N. peacekeeping or observation force, current policy stipulates that it is not allowed.

The JEI REPORT (ISSN 0744-6489) is published weekly for $40 per year by the Japan Economic Institute of America, 1000 Connecticut Avenue, N.W., Washington, D.C. 20036. Second class postage paid at Washington, D.C. POSTMASTERS: Send address changes to JEI, 1000 Connecticut Avenue, N.W., Washington, D.C. 20036.

This position has been reaffirmed in successive sessions of the Diet in interpellations between Diet members and cabinet officials. Given the present climate, there appears little likelihood of a policy adjustment or legislative amendment to existing statutes to specifically allow SDF participation in U.N. forces. Consequently, when policymakers declare that overseas deployments -- even as part of U.N. observation teams -- are "unconstitutional," what they in fact meant prior to 1981 was that such deployments contravened Japanese laws, enacted in part to reflect Article IX. Since 1981 it has been a matter of government policy. There are exceptions to this rule. Where there is no danger of SDF personnel becoming involved in conflict situations, they are allowed to travel abroad for training purposes; Maritime Self-Defense Force vessels have made a number of overseas calls; and military personnel do serve as attaches in Japanese embassies.

• No "offensive" weapons - As the constitution prohibits "warmaking potential," the bind facing policymakers is in deciding what constitutes that potential. The government maintains that weapons systems manufactured, imported or deployed must be of an essentially defensive nature to be consistent with this provision. How, then, to define defensive versus offensive weapons? This is a matter that has been painfully established over the years in cabinet discussions and Diet debates, and is more than just semantics since the decisions directly affect Japan's defense capabilities.

As time has separated modern Japan from its wartime experiences and the nature of potential threats to its security has changed, the definition -- or, more properly, the perception -- of defensive systems has been adjusted. For example, when F-4 fighters were originally introduced to the SDF, the Japan Defense Agency ordered the planes without in-flight refueling capabilities, working under the premise that without this capacity, the range of the planes would be restricted essentially to Japan and therefore would not constitute a threat to other countries. Thus they could not be considered offensive.

Time and modern technological developments have changed the situation. Japan has assumed the goal of defending its sealanes to a distance of 1,000 nautical miles, well beyond the range of even the more advanced F-15s without refueling. Consequently, the government is considering proposals to install extra fuel tanks on the F-4s to extend their range and equip them for sealane defense.

The increasing sophistication and quantity of Soviet deployments in Asia have also persuaded Japanese policymakers to upgrade SDF capabilities. Thus the emphasis on domestic production of the SSM-1 surface-to-surface missile, a Japanese-designed system with a distance of 80 to 100 kilometers. When deployed on Japanese maritime vessels, the missile will have the capability to strike targets well beyond Japanese territorial waters, a quantum leap both in technological and policy terms. It is important to remember that at one time, policymakers felt that Japan's right to self-defense meant it could act only if foreign troops literally breached Japan's shores. This position has been modified somewhat over the years.

During the course of postwar deliberations, successive governments have underscored the concept of sustaining a defense capability that would represent the minimum necessary to preserve Japanese territorial integrity. Popularized

by the Hatoyama government in 1954, this terminology has become a standard element of Japanese defense policy planning, appearing regularly in the annual defense white papers. It is in the context of the defensive versus offensive weapons debate that the notion of minimum sustainable defense is important.

• No collective security agreements - Government policies maintain that although Japan has the legal right to enter into collective security arrangements -- the 1959 Supreme Court ruling cited earlier affirmed that principle -- it is a matter of policy that the minimum level of defense stance limits that right. Thus, a security treaty is permissible within the scope of present policies, but it is highly unlikely that a more encompassing arrangement for Japan -- something like the North Atlantic Treaty Organization -- would be. A certain element of flexibility has been introduced to allow Japanese participation in RIMPAC exercises, which include armed forces from Japan, the United States and other Pacific nations, but the general policy remains intact.

In justifying the security treaty with the United States, Japanese policymakers state that it is consistent with standing policies because it helps maintain minimum self-defense capabilities. Moreover, they note, the agreement is not fully reciprocal: it does not obligate Japan to defend the United States if it is attacked (although Prime Minister Yasuhiro Nakasone recently committed Japan to the defense of U.S. vessels deployed to defend Japan if they were attacked, even in international waters).

• No draft - The political rationale for this position is self-evident. Furthermore, many Japanese constitutional authorities agree that Article XVIII -- prohibition of involuntary servitude -- absolutely forbids the institution of a military draft.

The Nuclear Prohibition

Equally famous are Japan's non-nuclear principles -- the restrictions against possessing, manufacturing or "introducing" nuclear weapons -- issued by the Sato government in 1968. Nuclear opponents sought assurances that Japan would preserve a place in the world as a moral opponent of the proliferation of these systems. As the only victim of a nuclear bomb, Japan could serve as a beacon to world peace, these forces argued, if it forever renounced these weapons. Practical considerations were also present. Japan's regional neighbors have been suspicious of its growing military strength -- despite its determinedly defensive nature -- and its anti-nuclear stance helped reassure them of Japan's peaceful intentions.

These principles have come under stress in light of the realities of the U.S. "nuclear umbrella." The United States guarantees Japan's strategic security through extension of its nuclear forces, and some U.S. naval vessels in the Pacific presumably would have to carry nuclear weapons in order to assure the credibility of that guarantee.

The United States steadfastly has maintained a policy of no confirmation or denial of nuclear deployments. That is, weapons may or may not be deployed on certain vessels or in certain geographic regions, but the Department of Defense is mute on the subject. This enables the United States to maximize its

nuclear deterrence capability by allowing it to disguise the precise location of its strategic systems. The Japanese government has accepted this position. Tokyo contends that the 1960 Mutual Security Treaty requires prior consultation if the United States seeks to deploy forces in Japan. This, the government argues, includes nuclear forces. Since no consultations have been initiated, it is presumed that no nuclear weapons have been "introduced."

This understanding has maintained security and preserved Japanese policy for 40 years. Many U.S. defense analysts argue further that it has in fact contributed to nuclear stability, since the only other alternative to "no confirmation/denial" is massive nuclear deployment, an unacceptable option in both military and economic terms. Anti-nuclear forces in Japan reject this stance and exploit every opportunity to embarrass the government and gain leverage in their campaigns. They were particularly outraged in the early 1980s when former U.S. ambassador to Japan Edwin Reischauer declared that nuclear weapons had been in and about Japan.

That crisis passed, however, and the status quo remains, although Japanese opinion polls suggest some public skepticism. The United States extends its umbrella, and Japan officially expresses satisfaction that its principles are intact.

Interestingly, a 1983 study by Robert F. Reed[1] notes that the 1970 defense white paper (prepared under the supervision of then-JDA director general Nakasone) suggested that possession of tactical nuclear weapons was consistent with the non-nuclear principles. By the same token, nuclear depth charges have been proposed for the Maritime Self-Defense Forces for anti-submarine warfare.

As a practical matter, however, proposals to consider such steps would meet with intense public opposition. Furthermore, Japan's atomic energy law, passed in 1955, calls for utilization of nuclear power for peaceful uses only. Finally, Japan is a signatory to the Nuclear Nonproliferation Treaty, adding both moral and legal restrictions to any utilization of nuclear weapons systems. Nevertheless, it is important to note again that these policy guidelines have been established over the years primarily through cabinet-level discussions and have never been codified by the Diet, although the principles were reaffirmed by a Diet resolution in 1971 and by any number of government officials since that time.

Weapons Export Ban

This is another policy that has taken firm root in Japanese defense considerations. While early postwar bills established the trend toward the current ban on weapons exports, the present position is the result of cabinet decisions and not constitutional provisions. Although there has been, and presumably will be, pressure from arms manufacturers to loosen the ban, it is safe to say that for the near future, there will be no change.

[1]Robert F. Reed, The U.S.-Japan Alliance: Sharing the Burden of Defense (Washington, D.C.: National Defense University Press, 1983), p. 26.

It was the Sato government that instituted the broad elements of Japan's weapons export ban. In 1967 the government determined that Japanese manufacturers could not export weapons to communist countries, nations involved in conflicts or on the verge of armed disputes, or countries on U.N. embargo lists. The Miki government reinforced those policies in 1976, extending the ban to weapons technology and production methods. The problem in enforcing the policies comes in deciding what constitutes a weapon. For example, although the T-2 trainer aircraft manufactured by domestic firms for the Japan Defense Agency is used by the Self-Defense Forces, it is not subject to the export ban since it carries no armaments. Reinhard Drifte, assistant director for regional security studies at the International Institute for Strategic Studies, recently wrote[2] that numerous ambiguities in the present policy permit, for example, the display of fully armed, co-produced helicopters at the Paris Air Show and exports of jeeps to the Nicaraguan army. Furthermore, the U.S. Arms Control and Disarmament Agency listed certain Japanese dual-use exports as arms exports in its World Military Expenditures and Arms Transfers.[3]

These examples demonstrate the difficulty of enforcing a strict ban on arms exports. Increasingly, as DOD has noted, Japan's most significant security and defense contributions may be in the dual-use category, since so much of the country's research and development is initiated for commercial purposes yet has potential military application because of its sophistication. Furthermore, there remains the problem of exported products ultimately used for military purposes -- the above-mentioned jeep case, for example -- as opposed to exports that clearly fall into the weapons category -- complete bombs, for instance.

Peaceful Uses of Space

With the emergence of the controversy over the Strategic Defense Initiative, Japan's policies regarding the peaceful use of space have attracted considerable attention. The first Diet resolution on space utilization was approved by the lower house on May 9, 1969, stipulating that launch systems "shall be confined to peaceful purposes only and shall be carried out to contribute to the progress of science, the improvement of the nation's living standards and the welfare of human society."

With the growing desire of the SDF to utilize satellites for a variety of communications and intelligence purposes, the government clarified its understanding of that resolution before the lower house budget committee on February 6, 1985. The position adopted at that time stated that the phrase "for peaceful purposes only" was construed as "disapproval of direct use by the Self-Defense Forces of any satellite as a [lethal] or destructive weapon." MSDF's access to the U.S. Fleetsat telecommunications satellite was justified on the grounds that the system's functions were similar to the telecommunications -- as distinct from the military -- functions of other systems commonly

[2]Reinhard Drifte, Arms Production in Japan: The Military Applications of Civilian Technology (Boulder, Colorado: Westview Press, Inc., 1986), Chapter 6.

[3]U.S. Arms Control and Disarmament Agency, World Military Expenditures and Arms Transfers 1985 (Washington, D.C.: Government Printing Office, 1985).

utilized by Japan, including Intelsat systems, Inmarsat (International Maritime Telecommunications System) and its own current generation of communications satellites, used by the SDF for unclassified communications. The government has further taken the stance that participation in SDI research is consistent with established policies.

Implementation of the Policies

The legal framework for the nuts and bolts conduct of Japan's policies is outlined in the 1954 legislation establishing the Self-Defense Forces and the Japan Defense Agency. Furthermore, two sets of broad policy guidelines direct present-day policies: the 1976 National Defense Program Outline and the periodic five-year procurement programs.

While the provisions of the SDF and JDA legislation are too extensive to detail completely here, the essential elements are worth examining. One of the primary purposes of the legislation, of course, is to establish civilian control over the military. There are also restrictions that have limited to a significant degree the power of the prime minister to initiate and implement defense policies. Most significant of these is the establishment of the National Defense Council, a consultative body consisting of the prime minister, the director general of the defense agency, and certain other key ministers. The prime minister must report to and/or consult with the NDC in a number of areas before taking certain actions, including:

- Decisions involving the Defense Outline;
- The "coordination of industrial production and other matters relating to defense planning;"
- Decisions regarding the mobilization of the Self-Defense Forces; and
- "Other matters related to national defense that the prime minister recognizes as necessary to be discussed."

This vague yet comprehensive definition of matters subject to the NDC's review significantly limits the power of the prime minister to conduct an independent defense strategy. Supporters of the present arrangement, of course, contend that such a structure is necessary from a number of perspectives, including assurance of civilian control, prevention of a resurgence of militarism and the preservation of institutional limitations on Japan's defense to reassure Asian neighbors of the country's peaceful intentions. Critics say that requiring a council to approve decisions as fundamental as troop deployments in times of emergency is too cumbersome. Indeed, the Nakasone government currently is seeking suitable alternatives.

In addition, a number of statutes restrict the discretionary authority of the SDF and JDA, even in times of emergencies. For example, if Japan were invaded by a hostile force, it is questionable whether the prime minister's office would have the legal authority to allow effective deployment of SDF units. Numerous laws and regulations limit movements of the SDF. Many of these restrictions have been under examination by special task forces since the

1970s, and the cabinet is nearing a decision on the details of special emergency legislation to rectify the problems. Given their already highly controversial nature, the studies conducted have operated under grounds rules making any consideration of restricting civil liberties -- such as restrictions on freedom of speech during military conflicts or national emergencies -- off-limits.

The 1976 Outline

The JDA and SDF enabling legislation set the ground rules for formation of policies; the cabinet has done the rest. The document guiding present-day defense policies is the 1976 defense outline mentioned earlier. Approved by the Miki cabinet, the outline was sought by defense proponents who felt that without a firm articulation of policies, the SDF lacked direction and effectiveness. It was opposed by elements suspicious of the military who feared that such a step would revive militarism in the country. A statement of principles, they felt, implied certain commitments. Nevertheless, the National Defense Program Outline was approved October 29, 1976 to achieve the "maintenance of a full surveillance posture in peacetime and the ability to cope effectively with situations up to the point of limited and small-scale aggression." Among its assumptions of the international situation necessitating Japan's self-defense program are the following:

- The major power blocs will continue a dialogue toward improving relations and reducing the threat of nuclear war.

- Despite this trend, regional instability will remain and the international situation will continue to be fluid.

- An equilibrium exists among the United States, China and the Soviet Union in the area around Japan.

- There is little possibility of a full-scale conflict between East and West due to the military balance, including the nuclear balance.

- That while the possibility of regional conflict cannot be dismissed, the U.S.-Japan security arrangement helps maintain international stability and prevents full-scale aggression against Japan.

The outline then details the force levels to be achieved and maintained to prevent various forms of direct and indirect aggression (see Appendix).

Through five-year procurement programs -- a pattern established prior to the adoption of the outline -- the government began to meet its long-term objectives. The present program -- the first to have the status of an official government program as opposed to being simply a target proposal -- took effect April 1, 1986 and will run to March 31, 1991.

To satisfy defense critics concerned about the implications of defining precise procurement goals, the Miki cabinet also adopted the now-famous restriction limiting total annual defense spending to a maximum of one percent of Japan's gross national product. Although the limit was adopted on a "temporary" basis, the emotional climate has grown so intense that the slightest challenge to the limit is a matter of front-page attention in Japanese dailies.

It is significant that most of the broad goals of the outline have been satisfied. Much of the direction of recent defense procurement policies has been to institute qualitative improvements in the levels of readiness described in the outline. However, the 1986 defense white paper addressed the issue of quantitative changes, although the annual report also stated that the government is not considering revision of the 1976 outline. Such discussions, coupled with the pressures of maintaining the present defense structure, have led to suggestions by some Japanese defense analysts that the 1976 outline itself -- and the accompanying one percent limit -- be examined in light of current realities and future needs. The Nakasone government reaffirmed the one percent policy in September 1985, but slower-than-anticipated economic growth could produce a situation where defense spending in fact exceeds one percent of GNP.

This debate is also significant in light of the additional burden assumed by the Suzuki government in May 1981: the promise to expand air defense and protect Japan's sealanes to a distance of 1,000 nautical miles. Revision advocates argue that the very assumptions of the 1976 outline are out of date and that procurement must be expanded to adapt not only to the realities of the growing Soviet buildup but also to the responsibilities implied by the 1981 sealane commitment. It is possible that this debate will emerge in early 1987 as the Diet examines the new defense budget.

The point of overriding importance is that the five-year programs, the concepts contained in the 1976 outline and the one percent restriction are all intertwined. Much of the sensitivity of the defense issue in Japan may have faded because of the carefully constructed bargains struck at the policymaking level over the last 10 years. Diet approval has come in the form of its approval of the annual defense budget. Altering one element of the structure could precipitate challenges to other elements and have significant potential for controversy.

International Agreements

Japan's defense interaction with other nations is increasing, but its relationship with the United States remains primary. The United States is the only country with which Japan maintains a formal defense-related agreement, outside of international treaties such as the nonproliferation agreement.

The fundamental element of the relationship is the Mutual Cooperation and Security Treaty of 1960. Replacing the Security Treaty of 1951, the present agreement, which is in force unless either party gives a one-year termination notice, provides for actions by either party against aggression in Japanese territory or possessions. Prime Minister Nakasone has, as noted, extended Japan's commitment under the treaty in a policy declaration during Diet interpellation that Japan could respond to an attack on U.S. vessels deployed to protect Japan even if they were in international waters. The treaty also provides the legal basis for U.S. bases in Japan (Article VI). An exchange of notes for implementing Article VI included the now-famous prior consultation clauses that give Japan considerable influence over U.S. deployment of American forces stationed in Japan.

The Mutual Defense Assistance Agreement of 1954 established the legal basis for providing equipment and technology to Japan. With Japan's growing role as a provider of technology, the agreement is also important in developing the rationale for technology flows back to the United States to reciprocate, in a sense, for years of technological imports by Japan, many of which have had distinct commercial applications according to one U.S. government report.

Conclusion

The structure of Japanese defense policy is an intricate one. A series of cabinet decisions and legislative actions have produced a well-defined yet delicately balanced set of guidelines that direct the formation of the country's policies. Because of the special burdens imposed by the country's experience of the 1930s and 1940s, any modification of this structure assumes even more profound implications. This helps explain, in part, the country's methodical approach toward defense issues and the frustration on the part of many of Japan's allies at what they perceive as footdragging in a key area. Nevertheless, it also explains why Japan has been able to make significant strides in defense with a minimum of public outcry.

For further information, contact Michael W. Chinworth.

* * * * * *

The views expressed in this report are those of the author and do not necessarily represent those of the Japan Economic Institute.

Appendix: Force Levels Stipulated by 1976 National Defense Program Outline

Classification	Level Stipulated in NDPO	Achieved FY 1985
Ground Self-Defense Forces		
Authorized personnel	180,000	180,000
Units deployed regionally in peacetime	12 divisions	12 divisions
	2 composite brigades	2 composite brigades
Mobile operational units	1 armored division	1 armored division
	1 artillery brigade	1 artillery brigade
	1 airborne brigade	1 airborne brigade
	1 training brigade	1 training brigade
	1 helicopter brigade	1 helicopter brigade
Low-altitude surface-to-air missile units	8 anti-aircraft artillery groups	8 anti-aircraft artillery groups
Maritime Self-Defense Forces		
Anti-submarine surface ship units (for mobile operations)	4 escort flotillas	4 escort flotillas
Anti-submarine surface ship units (regional district units)	10 divisions	10 divisions
Submarine units	6 divisions	6 divisions
Minesweeping units	2 flotillas	2 flotillas
Land-based anti-submarine aircraft units	16 squadrons	14 squadrons
Anti-submarine surface ships	60 ships	60 ships
Submarines	16	15
Combat aricraft	220	190
Air Self-Defense Forces		
Aircraft control and warning units	28 groups	28 groups
Interceptor units	10 squadrons	10 squadrons
Support fighter units	3 squadrons	3 squadrons
Air reconnaissance units	1 squadron	1 squadron
Air transport units	5 squadrons	3 squadrons
Early warning units	1 squadrons	1 squadrons
High altitude surface-to-surface air missile units	6 groups	6 groups
Combat aircraft	430	400

Source: Japan Defense Agency, Defense of Japan, 1985.